

## REMARKS

### I. Status of the Claims

Claims 3-5, 7-8, 10-12, 15-17, 19, 20, 22-23, 25, 28-30, 33, 34, and 37-41 are pending in the application. Claims 7, 16, 20, and 37-41 are independent claims. Claims 1, 2, 6, 9, 13-14, 18, 21, 24, 26, 27, 31, 32, 35 and 36 have been cancelled. The independent claims have been amended to recite the subject matter of cancelled claim 13, that the colorant is a water soluble FD&C dye. No new matter has been added. Applicants respectfully request reconsideration in view of the foregoing amendment and the following remarks.

### II. Rejections Over Prior Art

All of the claims have been rejected over U.S. Patent Application Publication No. 2003/0101902 A1 (hereinafter "Reitnauer"), in view of U.S. Patent No. 6,450,615 B2 (hereinafter "Kojima"), for the reasons of record.

### III. Arguments

The Office Action states as follows: "Applicant argues that Reitnauer does not teach how to disperse a water soluble colorant into a fat or wax base using a carrier for the colorant. The examiner agrees, however the independent claim does not require a water-soluble colorant nor does it claim a method of making." (Office Action page 4).

With respect to the first point, in view of the apparent agreement that Reitnauer does not teach a water soluble ink dispersed in a wax base, the amended claims should be allowable. Moreover, Applicants respectfully submit that many of the claims submitted with the previous amendment did specifically recite an FD&C dye (and all

such dyes are water soluble). Accordingly, the Office Action should have treated those claims on the merits.


As to the second point, that the claims are not directed to a method of making, it is well settled that references relied upon to support a rejection for obviousness must provide an enabling disclosure. That is to say, they must place the claimed invention in the possession of the public. *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 13 U.S.P.Q.2d 1301 (Fed. Cir. 1989); *In re Payne*, 606 F.2d 303, 314, 203 U.S.P.Q. (BNA) 245, 255 (CCPA 1979). That is not the case here, because Reitnauer teaches only a wax dispersible colorant, and (alone or in combination with Kojima) does not teach how to disperse a water soluble colorant into a wax base. Therefore, Reitnauer and Kojima do not make out a valid obviousness rejection with respect to the amended claims.

Reitnauer also does not teach a glycerin carrier for the colorant. Reitnauer lists glycerin in a laundry list of “oils, flexibilizer and plasticizers.” This is not sufficient disclosure to teach the use of glycerin as a wax dispersible carrier for a water soluble colorant. The Office Action is off-point, where it alleges that glycerin is “capable of performing that function” (Office Action, page 4). If glycerin is added to the composition taught in Reitnauer in an amount sufficient to act as a flexibilizer, it clearly would not have the property of acting as a carrier for the colorant. The Office Action also fails to address those claims which require that the colorant be present at the solubility limit of the colorant for the carrier. Reconsideration on this point is also respectfully requested.

No new issues requiring further search and consideration are raised in connection with the present Amendment After Final, because the independent claims merely incorporate subject matter from previously dependent claims. Indeed, there appears to be agreement on the main issue. Applicants respectfully submit that this Amendment After Final places the claims in condition for allowance, and entry thereof is respectfully solicited. Favorable reconsideration of the pending claims and the early passage to issue of this application are respectfully requested.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

  
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